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**MEMO ENDORSED**

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July 14, 2008

**By Hand**

Hon. Lewis A. Kaplan  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1310  
New York, New York 10007-1312

*Benn v. National Geographic Society*, 03 Civ. 3122 (LAK)

Dear Judge Kaplan:

This firm represents Nathan Benn in this case. I write in response to the order (the "Order") issued on July 9, 2008 attached as Exhibit A. The Order refers to an earlier understanding between counsel in *Benn* that the disposition of the appeal of the contract claims in *Ward v. National Geographic*, 06-4863-cv(L), would control the disposition in *Benn*. If the Second Circuit affirmed the dismissal of Mr. Ward's contract claims, *Benn* case would be dismissed. If the Second Circuit reversed, *Benn* would go forward. That understanding is set forth in my earlier letter to this Court dated November 15, 2006, attached as Exhibit B.

On July 11, 2008, Mr. Ward filed a petition for rehearing and for rehearing *en banc* (the "Petition"), which stays the mandate pursuant to Fed. R. App. P. 41 (d). I believe it is appropriate that any proceedings in *Benn* also be stayed until the Second Circuit has had the opportunity to rule on the Petition. Thus, I respectfully suggest that the Court withdraw the Order and return the *Benn* case to the suspense calendar pending the Second Circuit's determination of the Petition. Robert Sugarman, Esq., counsel for National Geographic Society, advises me that he does not object to the relief I seek by this letter. Thank you for your cooperation.

SO ORDERED

LEWIS A. KAPLAN, USDC

Very truly yours,

Andrew Berger

cc: Robert Sugarman, Esq. (with enclosures)